

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
7

8 *Attorneys for Complainant*

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2013-849*

12 **MARLYCE CAROLE KENNEDY**
13 **a.k.a. MARLYCE KENNEDY a.k.a.**
14 **MARLYCE C. KENNEDY**

A C C U S A T I O N

15 **12219 102nd Place NE**
Kirkland, WA 98034

16 **2576 Peachwood Court**
17 **Sutherlin, Oregon 97479-8800**

18 **Registered Nurse License No. 529632**
Public Health Nurse Certificate No. 58290

19 Respondent.

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21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
25 Consumer Affairs.

26 2. On or about February 10, 1997, the Board of Registered Nursing issued Registered
27 Nurse License Number 529632 to Marlyce Carole Kennedy, also known as Marlyce Kennedy,
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1 and also known as Marlyce C. Kennedy, (Respondent). The Registered Nurse License expired on
2 December 31, 2004, and has not been renewed.

3 3. On or about November 6, 1997, the Board of Registered Nursing issued Public Health
4 Nurse Certificate Number 58290 to Respondent. The Public Health Nurse Certificate expired on
5 December 31, 2004, and has not been renewed.

6 **OTHER LICENSE HISTORY**

7 4. On or about August 1, 1995, the Texas Board of Nursing issued Texas Registered
8 Nurse License No. 621195 to Marlyce C. Kennedy. Texas Registered Nurse License No. 621195
9 expired on November 30, 2004, and has not been renewed.

10 5. On or about October 28, 1997, the Washington Board of Nursing issued Washington
11 Registered Nurse License No. 00128570 to Marlyce Carole Kennedy. Washington Board of
12 Nursing Registered Nurse License No. 00128570 expired on November 22, 2004, and has not
13 been renewed.

14 6. On or about November 20, 2003, the Oregon State Board of Nursing issued Oregon
15 Registered Nurse License No. 200342283 to Marlyce Carole Kennedy. Oregon Registered Nurse
16 License No. 200342283 is due to expire on November 21, 2014.

17 7. On or about October 8, 2004, the Oregon State Board of Nursing issued Oregon
18 Psychiatric/Mental Nurse Practitioner Certificate No. 200450131 to Marlyce Carole Kennedy.
19 Oregon Psychiatric/Mental Nurse Practitioner Certificate No. 200450131 is due to expire on
20 November 21, 2014.

21 **JURISDICTION**

22 8. This Accusation is brought before the Board of Registered Nursing (Board),
23 Department of Consumer Affairs, under the authority of the following laws. All section
24 references are to the Business and Professions Code unless otherwise indicated.

25 9. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
26 that the Board may discipline any licensee, including a licensee holding a temporary or an

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1 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
2 Nursing Practice Act.

3 10. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
4 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
5 licensee or to render a decision imposing discipline on the license. Under section 2811,
6 subdivision (b), of the Code, the Board may renew an expired license at any time within eight
7 years after the expiration. After the expiration of such eight-year period the board may require as
8 a condition of reinstatement that the applicant pass such examination as it deems necessary to
9 determine his present fitness to resume the practice of professional nursing.

10 11. California Code of Regulations, title 16, section 1419.3, provides that a licensee may
11 renew a license that has been expired for more than eight years by paying the renewal and penalty
12 fees specified in Section 1417 and providing evidence that he or she holds a current valid active
13 and clear registered nurse license in another state, a United States territory, or Canada, or by
14 passing the Board's current examination for licensure.

15 12. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
16 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
17 action during the period within which the license may be renewed, restored, reissued or
18 reinstated.

19 **STATUTORY PROVISIONS**

20 13. Section 2761 of the Code states:

21 "The board may take disciplinary action against a certified or licensed nurse or deny an
22 application for a certificate or license for any of the following:

23 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

24 ...

25 "(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
26 against a health care professional license or certificate by another state or territory of the United
27 States, by any other government agency, or by another California health care professional
28

1 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
2 action.”

3 **COST RECOVERY**

4 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
8 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
9 included in a stipulated settlement.

10 **FIRST CAUSE FOR DISCIPLINARY ACTION**

11 (Unprofessional Conduct – Out of State Discipline)
12 (Bus. & Prof. Code § 2761, subd. (a)(4))

13 15. Respondent has subjected her Registered Nurse License to disciplinary action under
14 Code section 2761, subdivision (a)(4), in that on or about April 14, 2010, in a disciplinary action
15 before the Board of Nursing of the State of Oregon (Oregon Board), in Case No. 10-069, the
16 Oregon Board issued a Final Order reprimanding the Oregon Nurse Practitioner Certificate of
17 Respondent and approving the Stipulation for Reprimand with Conditions of Oregon Nurse
18 Practitioner Certificate No. 200450131. The Oregon Boards Final Order found that reasonable
19 factual and legal grounds support its decision.

20 16. The Findings of Fact included, but were not limited to, the following:

21 a. Marlyce Carole Kennedy is a Psychiatric Mental Health Practitioner in
22 Oregon. In May 2005, Coos County hired Ms. Kennedy to be the Adult Psychiatric Services
23 Coordinator at the Coos County Mental Health Department (CCMHD). In this position, Ms.
24 Kennedy’s primary role was to provide “medication prescribing and supervision of CCMHD
25 patients.” Ms. Kennedy’s role also included the “facilitation and coordination of medical services
26 between CCMHD, the Crisis Resolution Center, and the local children’s crisis bed facility.”

27 b. In early February 2009, Ms. Kennedy began experiencing health issues and
28 missed a significant amount of work. In March 2009, following the reassignment of Ms.

1 Kennedy's patients, who were determined to have priority needs, other providers at CCMHD
2 became concerned about Ms. Kennedy's clinical abilities. The clinic's administration initiated a
3 comprehensive review of the Licensee's case files, which included enlisting an independent
4 Psychiatrist to review a sampling of her charts. Based upon the concerns of the CCHMD clinical
5 staff, CCHMD placed the Licensee on administrative leave on April 9, 2009.

6 c. The identified areas of concern surrounded the Licensee's prescribing practices,
7 and included, but were not limited to, "excessive use of polypharmacy, large doses of
8 antipsychotic medications used for non-psychotic psychiatric disorders, occasional medications
9 used in what would be considered inadequate or larger doses according to current evidence,
10 Benzodiazepines used over extended periods of time in several cases, and stimulant medications
11 prescribed to patients with substance abuse histories." During Licensee's absence from CCHMD,
12 numerous medications of "various types and doses" were found unsecured in her office. On June
13 3, 2009, "based largely on the chart review, incomplete documentation and the discovery of the
14 inappropriately stored medications, CCMHD terminated the Licensee's employment."

15 d. In September 2009, the Oregon Board began its investigation of CCMHD's
16 allegations against Ms. Kennedy, including her prescribing practices. Ms. Kennedy's caseload
17 while at CCMHD ranged from at least 200 to 225 patients. The patients came to CCMHD with
18 "complex psychiatric conditions, as well as compounding physical ones." The Oregon Board
19 found that Ms. Kennedy presented a sound and research-based rationale in her practice of
20 prescribing multiple medications to a patient, using or discontinuing certain medications, and
21 using doses above or below what others may consider therapeutic. However, the Board found
22 that the patient's records were not complete in many cases, and did not include the necessary
23 rationale for Ms. Kennedy's clinical decisions. It also found that Ms. Kennedy's patient records
24 lacked clarity and conciseness, which made them difficult for anyone, other than Ms. Kennedy, to
25 follow her clinical course. Further, the records did not represent a true and accurate accounting of
26 the level of care provided by Ms. Kennedy.

27 e. The Board reviewed the charts and found that the diagnostic lists were not
28 always complete, they lacked clear definition, and in some cases, key diagnoses (such as

1 alcoholism) were not included. Regarding the unsecured medications found in Ms. Kennedy's
2 office, the Board found that she had previously admitted she had held the prescription bottles in
3 her desktop drawer, even though she intended to dispose of them in a manner consistent with
4 State and Federal Law.

5 17. The Oregon Board's Conclusions of Law included, but were not limited to, the
6 following:

7 a. The above conduct is a violation of the provisions of Oregon Revised Statutes
8 (ORS) section 678.111(1)(f) and constitutes cause for disciplinary action because it was "conduct
9 derogatory to the standards of nursing."

10 b. The above conduct also violated OAR section 851.045.0070 by, among other
11 things, engaging in inaccurate recordkeeping in client or agency records, and failing to
12 communicate information regarding the client's status to members of the health care team
13 (physician, nurse practitioner, nursing supervisor, nurse coworker) in an ongoing and timely
14 manner.

15 c. The above conduct also violated OAR section 851.056-0016(2)(h) by her
16 "failure to properly assess and document client assessment when prescribing, dispensing,
17 administering, or dispensing drugs."

18 **SECOND CAUSE FOR DISCIPLINARY ACTION**

19 (General Unprofessional Conduct)
20 (Bus. & Prof. Code §2761(a))

21 18. Complainant realleges the allegations set forth in paragraphs 15, 16, and 17 and
22 incorporated them by reference as if fully set forth.

23 19. The conduct as alleged in paragraphs 15, 16, and 17, above, constitutes general
24 unprofessional conduct, and provides grounds for discipline, under the non-inclusive provisions
25 of Code section 2761, subdivision (a).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 529632, issued to Marlyce Carole Kennedy, a.k.a. Marlyce Kennedy, a.k.a. Marlyce C. Kennedy (Respondent);
2. Revoking or suspending Public Health Nurse Certificate Number 58290, issued to Respondent;
3. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: March 28, 2013 for Stacie Ben
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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